

HOUSE BILL REPORT

2SHB 1281

As Passed House:
March 4, 2015

Title: An act relating to sexual exploitation of minors.

Brief Description: Concerning the sexual exploitation of minors.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Sawyer, Orwall, Hurst, Blake, Stokesbary, Tarleton, Walsh, Kirby, Appleton, G. Hunt, Pettigrew, Jinkins, Carlyle, Fey, Ortiz-Self, Senn, Walkinshaw, Moeller, Kilduff, Robinson, Van De Wege, Stanford, Ryu, Lytton, Sells, Riccelli, Kagi, Bergquist, Clibborn, Santos, Buys and Gregerson).

Brief History:

Committee Activity:

Public Safety: 1/30/15, 2/6/15 [DPS];

Appropriations: 2/25/15, 2/27/15 [DP2S(w/o sub PS)].

Floor Activity:

Passed House: 3/4/15, 97-0.

Brief Summary of Second Substitute Bill

- Assesses a fine of \$1,000 for each depiction or image of visual or printed matter that constitutes a separate conviction for Possession of Depictions of a Minor engaged in sexually explicit conduct.
- Creates the Internet Crimes Against Children Account.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Pettigrew and Wilson.

Staff: Cassie Jones (786-7303).

HOUSE COMMITTEE ON APPROPRIATIONS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 33 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Condotta, Dent, Dunshee, Fagan, Haler, Hansen, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger, Van Werven and Walkinshaw.

Staff: Melissa Palmer (786-7388).

Background:

A person commits the crime of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct. Sexually explicit conduct means actual or simulated:

- sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;
- penetration of the vagina or rectum by any object;
- masturbation;
- sadomasochistic abuse;
- defecation or urination for the purpose of sexual stimulation of the viewer;
- depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer; and
- touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct is either a class B felony, punishable by up to 10 years in prison and a \$20,000 fine, or a class C felony punishable by up to five years in prison and a \$10,000 fine, depending on the content of the images.

The Washington State Internet Crimes Against Children Task Force (Task Force) is made up of local, state, and federal law enforcement agencies working to identify, arrest, and convict those individuals who victimize children by way of the Internet. Crimes investigated by the unit include: Communication with a Minor for Immoral Purposes, Sexual Exploitation of a Minor, Possession of Depictions of Minors Engaged in Sexually Explicit Conduct, and Dealing in Depictions of Minors Engaged in Sexually Explicit Conduct. The Seattle Police Department is the lead agency for the Task Force, which is one of 61 such task forces in the United States funded by the United States Department of Justice.

Summary of Second Substitute Bill:

A person convicted of Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct must be assessed a fine of \$1,000, for each conviction. The fees assessed must be deposited into the Internet Crimes Against Children Account (Account).

The Account is created in the custody of the State Treasurer. Only the Attorney General or his or her designee may authorize expenditures from the Account. Twenty-five percent of the receipts will be granted to Child Advocacy Centers and 75 percent of the receipts will be granted to the Task Force.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 3, 2015

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Public Safety):

(In support) This is a necessary conversation. Last year there were 17,000 individuals identified who downloaded images of child rape. Based on national data, half of these individuals are hands-on offenders or they are trying to lure children online. Years ago, society relied on children coming forward and reporting such crimes. This bill is our best lead. There are thousands of leads that are not being pursued. There is not nearly enough money to go after all the leads. There is a moral and financial cost to this. People need to intervene on behalf of children early on to avoid abuse in their lives. Every dollar that is spent to rescue a child is the whole reason we are here.

This bill will fight online human trafficking. This is first and foremost a child rescue bill. These children suffer; they are lured from home and subject to abuse. Their abuse may be broadcast online. The Task Force rescues such children. Rescues are accomplished by task forces like this and with specialized training and expertise. There are hundreds of thousands of children suffering in America. These children cannot ask for help. The Task Force intercepts attempts to entice children on a daily basis. The Task Force does not have the manpower to rescue all the children. Law enforcement is overwhelmed and outnumbered and needs more resources.

Less than 1 percent of child pornography images are a simple photo of a naked child. Most are videos of 2- and 3-year-old children screaming while being raped. These are images of crime scenes of children. There are hundreds of thousands of these images in the State of Washington. There is a duty to identify victims and rescue them and to identify the suspects and prosecute them. Many kids do not or cannot report the abuse. This is a beacon of light for law enforcement to show where these suspects and victims are located. Law enforcement could go after them tomorrow if they had the resources. In order for the process to work, the funding must be an ongoing revenue source. Investigators are overwhelmed and there is a lack of resources.

Section 1 of the bill accurately portrays the consequences to children in this situation. One of the main tools traffickers use to coerce victims are the images capturing them in

compromising situations. No fine or fee can heal the victims, but the resources in this bill will help get the victims services. Morality cannot be legislated, but legislation must be moral.

(Opposed) There is a need here; there is no disputing the need to fund investigations and provide treatment. There is no estimate about what the revenue would be from these fines. It is likely a fiction that any significant amount of money will be collected from perpetrators. After a conviction, an offender will not likely have significant resources and will not be employable. The money from the fine probably will not materialize. Legal financial obligations cause a downward spiral for offenders and impedes their recovery. Offenders are people who will need treatment to address their deviance and they will not have money to pay for it. This is a fine not a fee, as it is legally described.

Staff Summary of Public Testimony (Appropriations):

(In support) This is not about child pornography, but about rescuing children. Data from the Federal Bureau of Investigations shows that at least 50 percent of people downloading these images are hands-on offenders that are abusing children. The majority of children in these images are under 8 years old and about 40 percent are of toddlers and infants. Washington does not adequately support these enforcement activities when compared to other states. The State of Washington has the most people, on per capita basis, downloading child pornography. It is the state's highest priority to protect these children.

The trading of images depicting sexually exploited children is one of the darkest secrets in our society. There are over 17,000 computers in this state that are trading child pornography. Child pornography includes images of children that are being abused, raped, and tortured. One-half of the arrests lead to a rescue of a child. The Internet Crimes Against Children Task Force is severely underfunded. Law enforcement can only respond to 2 percent of the leads. The unclaimed lottery distribution will provide steady, reliable funding to support the enforcement effort across the state.

Child Advocacy Centers (CACs) take a multidisciplinary approach toward the investigation of child abuse and neglect. The CACs provides a coordinated, victim-centered approach serving the those impacted by these crimes. The CACs have expanded its services but the state funding has not increased. Absent additional funding, CACs are forced to reduce their level of service.

(Opposed) None.

Persons Testifying (Public Safety): (In support) Representative Sawyer, prime sponsor; Alicia Kozakiyciez and Paul Jasosh, Protect; Mike Edwards, Seattle Police Department; Tim Heffer, Darlene and Steve Lyle, Justice and Mercy Foundation; and Darwin P. Roberts, Office of the Attorney General.

(Opposed) Bob Cooper, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Testifying (Appropriations): Representative Sawyer, prime sponsor; Seth Dawson and Randy Ryan, Children's Advocacy Centers; David Keith, National Association to Protect Children; and Paul Jagosh, Protect.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.